

make up their verdict in cases of jury trial; and in cases of demurrer and other trials before the court, at any time before judgment is entered. Amendments may in like manner be made before justices of the peace.

Particular Cases.

This section justifies an amendment of *narr.* and writ, so as to change them from covenant to *assumpsit*. *Baltimore, etc., Co. v. McGowan*, 16 Md. 53. And see *Kirwan v. Raborg*, 1 H. & J. 296.

Where a suit for negligence causing death is brought by titling in name of state for use of, etc., declaration may be amended by insertion of state as legal plaintiff. Sec. 45 does not preclude such amendment. *B. & O. R. R. Co. v. State*, 62 Md. 481.

Allowing a plaintiff to withdraw a separate *narr.* against one of the defendants is justified by this section. *Mitchell v. Smith*, 4 Md. 406.

An amendment may be made under this section and secs. 43 and 44, by striking out name of one of two defendants. *Pendergast v. Reed*, 29 Md. 403.

This section applied where a declaration for slander was ruled bad on demurrer. *Terry v. Bright*, 4 Md. 435.

This section applied where there was a motion in arrest of judgment on account of error in declaration. *Newcomer v. Kean*, 57 Md. 125 (dissenting opinion).

This section referred to in upholding action of court in sending for declaration after the jury had retired, and having certain blanks therein filled up. *Spencer v. Trafford*, 42 Md. 21.

Where an omission in a *narr.* was evidently accidental, the case was remanded for amendment. *State, use Dodson, v. Baltimore, etc., Co.*, 77 Md. 493.

Generally.

This and the ten following sections are but a condensation of several statutes upon the subject of amendment; whenever they speak affirmatively, they negative the enlargement of right of amendment to another class of parties, unless a general expression embracing latter is used. This section is qualified by the following sections. *Thanhauser v. Savins*, 44 Md. 414.

The plaintiff may amend his declaration at any time before jury retires, or at any time before judgment is entered if trial is had before court. *Gisriel v. Burrows*, 72 Md. 373; *Scarlett v. Academy of Music*, 43 Md. 208; *Ritter v. Offutt*, 40 Md. 211; *Pendergast v. Reed*, 20 Md. 403; *Garrett v. Dickerson*, 19 Md. 448.

The allowance of an amendment, provided it is within power of court, is not subject of appeal. How amendments may be made. *Scarlett v. Academy of Music*, 43 Md. 208. And see *Staley v. Thomas*, 68 Md. 442; *Lohrfink v. Still*, 10 Md. 530; *Thillman v. Neal*, 88 Md. 529; *Mitchell v. Smith*, 4 Md. 406. *Cf. Union Bank v. Ridgely*, 1 H. & G. 324; *Schulze v. Fox*, 53 Md. 43.

An appeal lies from action of the court in refusing to allow an amendment of declaration after testimony on both sides has been taken; an amendment held proper and that it should have been allowed, although the refusal did not in itself justify a reversal. *Sterling v. Marine Bk. of Crisfield*, 120 Md. 398.

Some degree of discretion is reposed in the courts in allowing amendments, although language of this section is extremely broad. While this section by its terms relates only to pleadings in courts of law, since no formal pleadings are required in orphans' courts, a more stringent rule should not be applied to proceedings in latter courts then to cases in courts of law. *Long v. Long*, 118 Md. 200.

This section referred to in deciding that where a party has a choice between two alternative forms of action and adopts one of them but dismisses the action before judgment, he may afterwards resort to the other form of action. *Bolton Mines Co. v. Stokes*, 82 Md. 63.

An amendment of affidavit before a notary, and the warrant of justice to clerk, in attachment cases, are not within purview of this section. (See art. 9, sec. 28.) *Halley v. Jackson*, 48 Md. 260.

The right of sheriff to amend his return and right of interested parties to have it amended is a common law right not dependent upon this section. *Main v. Lynch*, 54 Md. 669; *Berry v. Griffith*, 2 H. & G. 337.

This section referred to in deciding that limitations might be pleaded to an amended declaration. *Schulze v. Fox*, 53 Md. 43. *Cf. Western Union Tel. Co. v. State, use Nelson*, 82 Md. 306.

Permission to amend does not *per se* amount to an amendment. *Lohrfink v. Still*, 10 Md. 535.